IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

FREDERICK T. RAY, III : CIVIL ACTION

:

v.

LT. LANCE BOHN, <u>et al</u>. : NO. 05-0340

M E M O R A N D U M

FULLAM, Sr. J. JANUARY , 2005

Plaintiff, an inmate at the Chester County prison, is seeking to bring a pro se 42 U.S.C. § 1983 civil rights action without prepayment of fees. He is alleging that the defendants have violated his constitutional rights because he was a given a fabricated misconduct report, in retaliation for lawsuits that he has filed against members of the staff at the Chester County prison, and that he was denied due process with regard to this misconduct report.

Pursuant to 28 U.S.C. § 1915(g), a prisoner who on three or more prior occasions while incarcerated has filed an action in a federal court that was dismissed as frivolous, malicious, or for failure to state a claim upon which relief may be granted, must be denied in forma pauperis status unless he is in imminent danger of serious physical injury at the time that the complaint is filed. Abdul-Akbar v. McKelvie, 239 F.3d 307 (3d Cir.), cert. denied, 533 U.S. 953 (2001).

Plaintiff has, prior to the instant action, filed three civil rights actions in this Court which were dismissed for failure to

state a claim upon which relief may be granted. Furthermore, nothing in this complaint suggests that plaintiff is in imminent danger of serious physical injury. Accordingly, plaintiff's motion to proceed in forma pauperis will be denied.

The three civil actions filed by plaintiff, which were dismissed for failure to state a claim upon which relief may be granted, are as follows: 1) Civil Action No. 04-0810 was dismissed by order of this Court filed September 13, 2004, 2) Civil Action No. 04-0805 was dismissed by order of this Court filed September 13, 2004 and 3) Civil Action No. 04-0558 was dismissed by order of this Court filed September 13, 2004.

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ORDER

day of January, 2005, in AND NOW, to wit, this accordance with the accompanying memorandum, IT IS ORDERED that plaintiff's motion for leave to proceed in forma pauperis is DENIED pursuant to 28 U.S.C. § 1915(g).

BY THE COURT:

JOHN P. FULLAM, Sr. J.

MEMORANDUM

TO: Judge John P. Fullam

FROM: Elaine B. Battle, Pro Se Law Clerk

RE: Ray v. Bohn, et al.

Civil Action No. 05-0340

DATE: January 28, 2005

Attached is a proposed memorandum and order denying plaintiff's motion to proceed in forma pauperis pursuant to 28 U.S.C. § 1915(g), because he has had three prior civil rights actions dismissed for failure to state a claim upon which relief may be granted, and there are no allegations in the complaint that would suggest that he is in imminent danger of serious physical injury.

Please let me know what action you decide to take by returning this cover memo to the Staff Attorney's office.

Thank	you	for	your	cooperation	n.
		_	Reco	ommendation	approved
		_	Reco	ommendation	disapproved
		_	Date	2	

Attachment